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No. 281

In The

Supreme Court of the United States

OCTOBER TERM, 1946

LADELL McKAY,
Petitioner,
vs.
STATE OF NEVADA,
Respondent.
} No. 281

LADELL McKAY,
Petitioner,
vs.
RICHARD SHEEHY,
Warden of State Prison,
Respondent.
} No. 281

petition not printed

RESPONDENTS' BRIEF

GRAY MASHBURN,
Counsel for Respondents.

ALAN BIBLE
Attorney General of Nevada,

HOMER MOONEY,
Deputy Attorney General,

GEORGE P. ANNAND,
Deputy Attorney General,

HAROLD O. TABER,
District Attorney of
Washoe County, Nevada.
Of Counsel for Respondents

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BRIEF FOR RESPONDENTS

The petition asks to have a review of the record of two orders of the Supreme Court of the State of Nevada (which is the highest court of that State in which such final decisions could be had). The orders are,

1. Judgment and order of the Supreme Court of Nevada, filed January 16, 1946, affirming the conviction and sentence to death of the defendant McKay for the crime of murder in the first degree. R. 15–75. (See 63 Nev. .....; 165 P. (2) 389.)

Petition for Rehearing denied March 19, 1946. R. 91–100 (63 Nev. .....; 167 P. (2) 476);

2. Judgment and order of the Supreme Court of Nevada, filed March 16, 1946, dismissing proceedings in habeas corpus by said Ladell McKay arising out of the same prosecution, conviction and sentence. R. 104–111. (63 Nev. .....; 168 P. (2) 315.)

The same record is used in both cases and the document filed by petitioner in this court July 8, 1946, embraces the petition and brief covering each case. Respondents' brief and objections in answer are consolidated accordingly.

Reasons Relied on for Allowance of Writs

I.

In its decision on appeal the State Supreme Court cited the statute of Nevada concerning the restraint imposed on a person accused in a criminal action before conviction as follows:

> In our Nevada Criminal Practice Act, chapter 1, sec. 7, occurs a provision prohibiting unnecessary restraint, before conviction of one accused of crime, said provision, sec. 10656, N. C. L., vol. 5, 1929, being as follows:
>
> > § 10656. WITNESS AGAINST SELF—UNNECESSARY RESTRAINT. § 7. No person can be compelled, in a criminal action, to be a witness against himself, nor shall a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

R. p. 56, lines 11–18.

The court held that the restraint was subject to the judicial discretion of the trial court, saying:

> Permitting a defendant to be shackled during his trial is legally justifiable only upon the trial court having found, in the exercise of its *judicial* discretion, in the

particular case, the existence of the exceptional conditions, of fact and circumstance, reasonably rendering necessary a departure from this wholesome and salutary general rule against shackling and manacling. (Italics ours).

R. p. 51, lines 17–23.

The court then found that the trial court properly exercised such judicial discretion in passing upon circumstances properly before it and in substance decided that the trial court's action was not error; was not without foundation, and was not capricious or arbitrary.

The instant assignment corresponds to assignment of error IV on appeal to the State Supreme Court as follows:

> Appellant's assignment of error IV is that, "The trial court erred in denying defendant's motion to have the handcuffs removed, which prejudiced appellant before the jury, and thus denied him a fair and impartial trial as guaranteed by the Constitution of Nevada and the United States Constitution."

R. 55, lines 19–23.

> This assignment was found to be without merit.
>
> In view of the exceptional facts and circumstances existing, and within the knowledge of the trial judge, as above outlined, at the time of the ruling, we cannot conscientiously say that the trial court abused its discretion in denying the motion to remove the handcuffs. There is no merit, therefore, to appellant's assignment of error IV.

R. 60, lines 14–20.

The opinion of the Supreme Court concludes with the following comprehensive finding of absence of error and decision affirming the judgment and sentence:

> This court further believes that the verdict, unfortunate as it is from the standpoint of the defendant,

was the only verdict which the jury could conscientiously render, if guided solely by the evidence, the law, and the desire to do justice. After an examination of the entire case, it appears that no error complained of, and no error we perceive in the record, has resulted in a miscarriage of justice, or actually prejudiced appellant in respect to a substantial right. Section 619 of "An Act to regulate proceedings in criminal cases in this state and matters with relation thereto," approved March 17, 1911, effective January 1, 1912, said section being section 11266, Nevada Compiled Laws, 1929, vol. 5, provides that:

> "No judgment shall be set aside, or new trial granted, in any case on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case, it shall appear that the error complained of has resulted in a miscarriage of justice, or has actually prejudiced the defendant in respect to a substantial right."

No prejudicial error appearing in the record, the judgment and order appealed from are affirmed, and the district court is directed to make the proper order for the carrying into effect by the Warden of the State Prison of the said judgment.

HORSEY, J.

We concur:

TABER, C. J.

DUCKER, J.

R. 74, lines 13–32; 75, lines 1–10.

See also opinion on petition for rehearing:

In the instant case, there was no error in declining to order the removal of the handcuffs, for the reasons

fully stated herein and in our opinion upon the appeal. The crime committed by the appellant, and of which he has so clearly been proven guilty, was an atrocious and cold-blooded murder. He literally beat and kicked to death, without provocation and without warning, and solely for the purpose of robbery, a man with whom he had pretended social companionship only a short while before. We may well paraphrase, and apply to the instant case, certain language of this court in the Skaug case, as follows: "Hence, in the presence of such enormous and clearly proven guilt we will not pause to speculate as to whether, 'if the handcuffing of appellant' had been omitted the jury might have returned a verdict carrying a lesser penalty. Section 11266 N. C. L. prevents a reversal."

R. 99, lines 26–32; 100, lines 1–7.

II.

The instant assignment corresponds to one of the assignments in the petition for habeas corpus to the State Supreme Court:

> That your petitioner was stripped, beaten and slapped by Harry D. Fletcher, Chief of Police of the City of Reno, County of Washoe, State of Nevada, on November 26, 1944, and your petitioner was forced to admit to said Chief of Police that he engaged in an altercation with Robert L. Flindt for the purpose of robbing him.

R. 102, lines 6–12.

See also decision of State Supreme Court on petition for habeas corpus:

> The illegality of his imprisonment is also put upon the ground that he was stripped, beaten and slapped by the Chief of Police of the City of Reno on November 26th, 1944, whereby he was forced to admit to said Chief of Police that he engaged in an altercation

with Robert L. Flindt for the purpose of robbing him, which forced admission was not true.

R. 105, lines 21–26.

Proceedings in habeas corpus are regulated by State statute in Nevada.

Section 1 of the Habeas Corpus Act of Nevada (sec. 11375 N. C. L. 1929) provides:

> Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

Section 19 (sec. 11393 N. C. L. 1929) provides:

> It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree, or in cases of contempt of court.

Section 20 (sec. 11394 N. C. L. 1929) provides:

> If it appears on the return of the writ of habeas corpus that the prisoner is in custody by virtue of process from any court of this territory, or judge or officer thereof, such prisoner may be discharged, in any one of the following cases, subject to the restrictions of the last preceding section: First—When the jurisdiction of such court or officer has been exceeded. Second—When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged. Third—When the process is defective in some matter of substance required by law, rendering such process void. Fourth—When the process, though proper in form, has

> been issued in a case not allowed by law. Fifth—When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth—Where the process is not authorized by any judgment, order, or decree of any court, nor by any provision of law. Seventh—Where a party has been committed on a criminal charge without reasonable or probable cause.

The petition before the State Supreme Court did not expressly raise any jurisdictional question. R. 101–103.

The decision of the Supreme Court in the habeas corpus proceedings indicates the following:

> It has been well settled that habeas corpus cannot be used to authorize the exercise of appellate jurisdiction. Ex Parte Winston, 9 Nev. 71; Ex Parte Maxwell, 11 Nev. 428; Ex Parte Gafford, 25 Nev. 101; Ex Parte Davis, 33 Nev. 309; In Re McCabe, 53 Nev. 463; Ex Parte Ohl, 59 Nev. 319; Bowen v. Johnston, 306 U. S. 19–30; 39 C. J. S. p. 444, sec. 15. In a habeas corpus proceeding the court has no power to review a case on its merits. Such would be the effect here if we permitted the use of the affidavits and excerpt of testimony for the purpose of showing that the confession testified to by the Chief of Police was involuntary. Errors and irregularities not involving questions of jurisdiction are beyond the legitimate scope of inquiry by habeas corpus. Ex Parte Winston, supra; Ex Parte Bergman, 18 Nev. 331; Ex Parte Dela, 25 Nev. 346; Ex Parte Ohl, supra; 39 C. J. S. supra. Rulings of the trial court with respect to the admission or exclusion of evidence fall within the above category. Ex Parte Dixon, 43 Nev. 196; Ex Parte Speer, (Ida.) 23 P. 2d 239; 39 C. J. S. p. 470, n. 4; 25 Am. Jur. 183, sec. 53. Such errors are properly reviewable on appeal. The Eureka Bank cases,

35 Nev. 80, relied on by petitioner, have no application. In those cases there had been no trial and conviction, as here.

While there was no error in the admission of the confession, yet if it had been shown at the trial that Chief of Police Fletcher by duress had induced it, the error of admitting it in evidence could not be reviewed and corrected on habeas corpus under the principles above stated. The time to inquire into the admissibility of the confession and to have made a showing against its voluntariness, was when it was offered during the progress of the trial, and if any error was committed in its admission in evidence, it could have been assigned as such and corrected on appeal. It is obvious that if any stripping, beating and slapping had been administered to petitioner to extort the confession, such duress was known to him and should have been made known to his attorney to enable him to take the appropriate steps to protect his rights at the trial and on appeal. His contention that he did not realize the legal significance of the confession cannot avail to retry the admissibility of the confession in this proceeding.

R. 109, lines 1–32; 110, lines 1–7.

The decision of the State Supreme Court and the record here show that, as a matter of fact, State law, and practice, petitioner voluntarily remained silent as to the incident here complained of from its date (November 26, 1944) until the trial ended (January 25, 1945); upon his motion for new trial (January 27, 1945, R. 10); upon his appeal (February 7, 1945, R. 13), and upon his petition for rehearing (February 7, 1946, R. 76–90). In fact it does not appear that petitioner told anyone of the incident until he verified his petition for habeas corpus (March 29, 1946, R. 101–103); that his attorney learned of it from a report of a civil service hearing in Reno on another matter March 1946 (R. 102, lines 15–19). It does not appear that

from the time of his trial petitioner was ever without the services of a competent and faithful attorney. Petitioner was silent for 16 months.

The decisions on the appeal and on the habeas corpus proceedings were based entirely on non-Federal grounds.

In the case of Barrington v. Missouri, 205 U. S. 483, in error to the Supreme Court of the State of Missouri it was said that "The decision of the Supreme Court that defendant had been tried in accordance with the procedure provided by the Statutes of Missouri is not open to revision here in the circumstances."

In that case the gravamen of the complaint was that the trial court in the exercise of its discretion had denied a change of venue. The Supreme Court of Missouri after a full inquiry found no abuse of discretion and found no error. This court said at this point (page 485):

> In our judgment no federal question was involved. Were this otherwise it would follow that we could decide in any case that the trial court had abused its discretion under the laws of the State of Missouri, although the Supreme Court of that State had held to the contrary.

Barrington v. Missouri is followed as to the defendant Rudish in Malinski v. New York, 324 U. S. 401, at 412, on certiorari, 323 U. S. 694. The case was also cited in Buchalter v. New York, on certiorari, 318 U. S. 797, 319 U. S. 417 at 430, in support of the following:

> But the "(14th)" amendment does not draw to itself the provision of State Constitutions or State laws. It leaves the States free to enforce their criminal laws under such statutory provisions and common law doctrines as they deem appropriate; and does not permit a party to bring to the test of a decision in this court every ruling made in the course of a trial in a State court.

In the Buchalter case even the cumulative weight of alleged oppression and possible errors on the trial was not enough to cause this court to reverse the judgment on certiorari.

In matters of prosecutions under State criminal laws the decisions in this court stem largely from R. S. sec. 721 (28 U. S. C. A. sec. 725) where Federal questions are not necessarily involved.

> The laws of the several states, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.

It is not too much to say that, within their province, the decisions of State courts of last resort are treated the same as laws.

In the decision in the habeas corpus proceedings in the State Supreme Court the question arising out of the handcuffing of the prisoner was raised, but the court reiterated the position it took on the appeal. The complaint about the slapping of the prisoner after he was arrested was then examined and the court declined to hear evidence offered in support of the allegations in the petition. Accordingly it dismissed the proceedings.

Respondents deny that the verified allegations in the petition for habeas corpus before the State Supreme Court and their repetition in the petition before this court are true except as shown by the record or raise a Federal question or call for an independent inquiry into the facts by this court.

If the facts were as stated (which respondents do not admit) they would show that when he was arrested November 26, 1944, the prisoner was coerced to make an extra-judicial admission against interest. The petition does not go on and claim that the admission was afterwards used against him at the trial.

This court in a case marked by evidence of illegal conduct by officers in obtaining a confession made the following observation:

> But illegal acts as such, committed in the course of obtaining a confession, whatever their effect on its

> admissibility under local law, do not furnish an answer to the constitutional question we must decide. The effect of the officers' conduct must be appraised by other considerations in determining whether the *use of the confessions* was a denial of due process. Moreover, petitioner does not, and *cannot*, ask redress in this proceeding for any disregard of due process *prior* to trial. The gravamen of his complaint is the unfairness of the use of his confessions, and what occurred in their procurement, is relevant only as it bears on that issue. (Italics supplied).

Lisenba v. California, 314 U. S. 219 at 235, on certiorari, 311 U. S. 617.

We suggest that the same statute of Nevada may be the foundation on which petitioner bases his hopes both in respect of his alleged mistreatment by the Chief of Police and his restraint by handcuffs during his subsequent trial. See section 10656, Nevada Compiled Laws 1929, quoted supra. But that section says that no person can be compelled, in a criminal action, to be a witness against himself. This right is protected in Federal courts by the fifth amendment. The object of the law as stated in the Lisenba case is to prevent false testimony obtained by compulsion, but the law of Nevada, in addition to sanctions against assault and battery, has always provided means on the trial for testing the voluntary character of an alleged admission and excluding confessions found to be involuntary. That law has always stood ready to be invoked, but the petition does not disclose that it was invoked. It is based not so much on tenderness toward one accused of crime, as the desire to exclude false testimony. Manacles, like the scarlet letter, are a badge of character which a prisoner should not be forced to exhibit ordinarily, but his rights should not extend to frustrating the ordeal of trial.

It appears in the record from the opinion of the Supreme Court of Nevada on the appeal that Chief of Police Fletcher testified to a conversation with the prisoner on November 26, 1944, at

which Mr. Jepson (District Attorney), Miss Brown (Stenographer), Captain Walter Cummings, and the witness, Chief Fletcher, were present; "that the appellant was apprised of his rights, no promises were made to him, that he was told that anything he might say might be used against him, and that he was advised as to the seriousness of the matter concerning which they were about to talk to him, and that everything he might say would be a voluntary statement on his part. R. 28, lines 18–28, R. 42, lines 21–32, R. 43, lines 1–16. The witness then testified as to what McKay stated to him, including the following summarized by the court:

> When asked why he dragged the body behind the picket fence he (the defendant) said he didn't want anyone to see him rob Flindt.

R. 30, lines 9–11.

There is nothing in the record to show any objection to this testimony given by the Chief of Police either as to the voluntary nature of the admission, or at all.

The defendant testified later on his own behalf after the Chief of Police had given his testimony (which the accused presumably heard).

In the Supreme Court comment on the case by way of summary of appellant's testimony, it is said:

> On November 26, 1944, about noon, the appellant, when asked by Chief of Police Fletcher why he dragged Flindt behind the picket fence, answered, "I don't know. I just didn't want to let anybody see me rob him, I guess." At the trial appellant was asked if he remembered making this statement to Chief Fletcher and answered "No."

R. 44, lines 22–28.

Nowhere in the record does it appear that the petitioner, even when his attention was specifically called to the conversation he had with the Chief of Police on November 26, 1944, and the

admission attributed to him by Chief Fletcher, made a single protest that the conversation was involuntary. His attorney made no objection. No error on that ground was assigned on appeal. The Supreme Court pointed out in the habeas corpus proceedings that if there had been any such error on the trial it could not be considered on habeas corpus proceedings, which do not serve the purposes of appeal. For this reason that court declined to inquire into the truth of the allegations respecting duress made in the petition for release on habeas corpus. We know of no decision of this court that it is a denial of due process to refuse relief to one convicted of crime who, intelligently aware of his rights, voluntarily neglects to complain and assert them at the time and in the manner provided by law until in effect a statute of limitations has run against him—in this case over a period of 16 months. Compare Patton v. U. S., 281 U. S. 276; Johnson v. Zerbst, 304 U. S. 458; Adams v. U. S. ex rel McCann, 317 U. S. 269–275–279.

In case the court should consider the advisability of an independent investigation into the facts of the case, respondents suggest that counsel might not deny the following propositions (most of which are suggested by the affidavits filed and remaining on file in the habeas corpus proceedings and excluded from consideration though referred to in some detail in the opinion on habeas corpus proceedings):

1. That the slapping incident occurred in the early morning of November 26, 1944, when the District Attorney's office was not represented.

2. That the petitioner was then under arrest and refused to answer questions except to give his name and other routine information for "booking."

3. That the so-called admission against interest was made later about noontime in the presence of the District Attorney and without any promise, menace or duress of the accused. He had "free choice to admit, to deny, or to refuse to answer." Lisenba v. California, 314 U. S. 219–241.

4. That the substance of the alleged admission was not "That petitioner was forced to admit to said Chief of Police that he engaged in an altercation with Robert L. Flindt for the purpose of robbing him," but it was that when asked by the Chief of Police why he dragged the body behind the picket fence, the petitioner said "he didn't want anyone to see him rob Flindt." R. 44, lines 22–28; R. 30, lines 9–11.

We do not believe this court will order an independent investigation into the facts. The 16-month period of silence is significant. The complaint as to one admission alone is curious inasmuch as many others equally damaging are noted in the Supreme Court's resume of Chief Fletcher's narrative of the petitioner's statement to him and none of them were or are objected to as either fabricated or involuntary. It is also hard to reconcile the apparently spontaneous explanation attributed to the prisoner, with some duress calculated to elicit precisely that response. Force may make the dumb to speak but hardly in so articulate and appropriate a fashion.

Respondents concede that one accused of crime is entitled to immunity from buffeting and besetments attacking his human dignity. We reprobate such practices. They do not square with the felt needs of the times in criminal practice. We would go a long way in classifying such outrages as "inherently coercive." (See Ashcraft v. Tennessee, 322 U. S. 143 at 154, Certiorari 320 U. S. 728).

One accused of crime is also entitled to protection against self-incrimination on his trial through extorted confessions. One invasion of right does not necessarily carry over to the other.

The problem here is whether the buffeting in the morning carried over a terrorism to the noon statement and, if so, if it carried over to the trial so as to silence the prisoner from protesting that the admission narrated was coerced. Apparently it left no scar.

Authorities Cited by Petitioner

Practically all the cases cited by petitioner were of decisions

after certiorari granted. This case is one before certiorari granted and the writ is discretionary with this court. An analysis of Petitioner's cases follows:

Malinski v. New York, 324 U. S. 401; Certiorari, 323 U. S. 694.

There were two confessions in this case; one extorted by duress and the other not so unless on the theory of a persisting terror. The New York Court of Appeals found the second confession to be without duress. Certiorari was granted because of the substantial Federal question found to be presented arising out of the first confession. Error was timely claimed upon the trial in the State court. After an independent review of the record this court found that petitioner had been convicted on a confession that was involuntary and so reversed the judgment in the case of Malinski. The judgment against Rudish was affirmed, it being found that Malinski's confession did not affect Rudish. The mandate called for further proceedings.

Chambers et al. v. Florida, 309 U. S. 227; Certiorari, 308 U. S. 541.

The issue here was whether a confession was "freely and voluntarily made." Objection was seasonably made. The circumstances appeared from a transcript of proceedings on a writ of error coram nobis, sued out when the circumstances, unknown to the State court in the beginning, were brought to light. They were accordingly a part of the record on petition to this court for certiorari. This court after an independent inquiry found that the confessions were involuntary and reversed the judgments of convictions. The confessions were the result of "grilling" for five days and one night.

Ashcraft et al. v. Tennessee, 322 U. S. 143; Certiorari, 320 U. S. 178.

The issue here was whether the confessions were "freely and voluntarily made." Objection was timely made. The State Supreme Court did not declare it to be the duty of the trial court to determine whether the confession was voluntary. This court

held that the duty of this court to make an independent examination was not foreclosed "by the finding of a court or the verdict of a jury, or both." Citing Lisenba v. California, 314 U. S. 219, 237–238.

Ashcraft was "grilled" for 36 hours and this court said it was "inherently coercive."

This court reversed the judgment of the Tennessee Court which affirmed Ashcraft's conviction and remanded the case of both defendants to the State Court for further proceedings.

Betts v. Brady, 316 U. S. 455; Certiorari to the Court of Appeals of Maryland, 315 U. S. 791.

In granting the writ this court requested counsel to argue the question whether the decision under scrutiny was that of the highest court of the State in which final judgment could be had.

In deciding the question this court answered in the affirmative.

This court then inquired into petitioner's contention that his conviction did violence to the fourteenth amendment. The particular complaint was as to lack of counsel.

This court after pointing out that the sixth amendment as such applies only to trials in Federal courts, conceded that situations covered by the amendment might also be covered by the fourteenth amendment. It then proceeded to find that whereas in the Federal courts it has been held that counsel must be appointed in all criminal cases "where the defendant is unable to procure the services of an attorney, and where the right has not been intelligently and competently waived" (citing Johnson v. Zerbst, 304 U. S. 458), the States are not concluded in the matter in all criminal cases by the fourteenth amendment. State Constitutions vary. The requirement is obligatory in Nevada (N. C. L. 1929, sec. 10883) but was not always so (N. C. L. 1861–1873, Ch. LIII, p. 477–493).

This court then found that petitioner waived a trial by jury and if he had been at serious disadvantage by reason of lack of counsel, a refusal to appoint would have resulted in a reversal of the judgment of conviction. The judgment was affirmed.

Ward v. Texas, 316 U. S. 547, Certiorari, 316 U. S. 935.

In this case the jury found the confession was voluntary so far as the evidence of physical mistreatment was concerned and the Texas Court of Criminal Appeals finally declined to set aside that finding of the jury.

This court, however, inquired whether "the circumstances under which the confession was made were such that its admission in evidence amounts to a denial of due process."

Conceding that the question of physical mistreatment was conclusively resolved by the jury's verdict, this court found that the prisoner had been questioned in three different jails in three different counties on three different days, carrying him over 110 miles from the scene of the crime, holding him incommunicado without advice of friends or counsel. For this reason the judgment and conviction were reversed.

All of petitioner's authorities are decisions of this court after this court in its discretion granted the petitions for the writ. None of them disclose, after inquiry, any intelligent or competent waiver of fundamental right (except Betts v. Brady which does not seem germane to the discussion).

All of them disclose, after inquiry, outrages which might be recognized at first blush to be more "inherently coercive" both in severity and in lasting effect than those alleged (and not proved) here.

Objections to Petitions

It appears that the decisions of the State Supreme Court rest on adequate, independent, non-Federal grounds and are not arbitrary.

McCoy v. Shaw, 277 U. S. 302; Williams v. Kaiser, 323 U. S. 471.

No Federal question was expressly or necessarily decided by the State Supreme Court.

Whitney v. People, 274 U. S. 357.

The decision of the State Supreme Court that petitioner was

tried in accordance with the procedure provided by the Statutes of Nevada is not open to revision here in the circumstances.

Barrington v. Missouri, 205 U. S. 483.

Petition cannot ask redress in this proceeding for any denial of due process prior to the trial.

Lisenba v. California, 314 U. S. 219–235; Certiorari, 311 U. S. 617.

Petitioner, as appears from the record, intelligently and voluntarily waived objection to the reception of the testimony detailing his alleged admission, on the trial and thereafter.

Compare as to waiver of other rights:

Patton v. U. S., 281 U. S. 276.

Johnson v. Zerbst, 304 U. S. 458.

Adams v. U. S. ex rel. McCann, 317 U. S. 269–275–279.

Conclusion

The petition ought to be denied.

Dated this .... day of August 1946.

GRAY MASHBURN,
Counsel for Respondents.

ALAN BIBLE
Attorney General of Nevada,

HOMER MOONEY,
Deputy Attorney General,

GEORGE P. ANNAND,
Deputy Attorney General,

HAROLD O. TABER,
District Attorney of
Washoe County, Nevada.
Of Counsel for Respondents